



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

May 26, 2009

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MEMORANDUM FOR DIRECTORS, COLLECTION AREA OPERATIONS

FROM: Laura Hostelley /s/ Laura Hostelley  
Acting Director, Collection Policy

SUBJECT: Interim Guidance on Processing of In-Business Trust Fund  
Installment Agreements for Disregarded Limited Liability  
Company Entities

The purpose of this memorandum is to issue interim guidance for processing of In-Business Installment Agreements (IBTF-IA) for employment taxes reported in the name and employer identification number (EIN) of a disregarded Limited Liability Company (LLC) when there are delinquent tax liabilities owing for tax periods ended before and after January 1, 2009. This memorandum revises and clarifies the Internal Revenue Manual (IRM) 5.14, Installment Agreements. The affected section of IRM 5.14.7, BMF Installment Agreements, will be revised to include the information in this memorandum. Please ensure that this information is distributed to all affected employees in your organization.

An LLC may be a single member entity (i.e., the entity is owned by one person), or a multi-member entity (i.e., the entity has two or more owners). In the single member LLC context, the determination of who is responsible for any unpaid employment tax liability depends on the tax period at issue. In general, a single member LLC is classified as a disregarded entity and as a result, its activities are treated in the same manner as a sole proprietorship, branch or division of its sole owner. See Treas. Reg. § 301.7701-2(a).

For wages paid prior to January 1, 2009, a single member LLC was permitted to satisfy its employment tax obligations with respect to employees performing services for the entity in one of two ways:

(1) Calculation, filing and payment of all employment taxes under the owner's name and EIN or;

(2) Separate calculation, filing and payment of all employment taxes under the LLC's name and EIN. Notice 99-6, 1999-3 I.R.B. 12.

Even in the latter situation, the owner of the LLC was treated as the employer for purposes of employment tax liability. Employment tax assessments were made in the name and EIN of the single member LLC, without regard to whether the LLC being assessed was a disregarded entity. Consequently, an LLC that is a disregarded entity was often assessed for the employment tax liabilities that were the ultimate responsibility of the company's owner.

For wages paid on or after January 1, 2009, a single member LLC no longer has the two options set forth in Notice 99-6 for satisfying employment tax obligations.

Because of changes to Treasury Regulation § 301.7701-2 (c)(2)(iv), the LLC is the liable taxpayer for employment tax periods beginning on or after January 1, 2009, regardless of the LLC classification for Federal income tax purposes. For these taxpayers, it will be common to have assessments in the name and EIN of the LLC, where;

- Single member owner (SMO) of the LLC is the liable taxpayer for employment tax periods ending before January 1, 2009, and
- LLC is the liable taxpayer for tax periods beginning on or after January 1, 2009.

The identity of the liable taxpayer may also change for employment tax periods ending before January 1, 2009 due to changes in membership or election. See IRM 5.1.21.3.7.1, Examples of Classification Changes by Ownership or Election, for examples.

There is no systemic method to determine the liable taxpayer for employment taxes assessed in the name and EIN of an LLC for tax periods ended prior to January 1, 2009. Thus, the changes in the regulations created processing problems for any of these entities with Bal Due liabilities owing for tax periods ended before and after January 1, 2009. These assessments are grouped together on IDRS under the same EIN when they are separate taxpayers liable for separate tax periods.

The installment agreement program is greatly affected by these changes. Installment agreements cannot systemically accommodate separate closing actions for specific tax periods with a common EIN. Thus, there is no systemic mechanism for inputting or monitoring an IA for a disregarded LLC entity.

The attachment to this memorandum outlines the procedures to apply to any case where;

- the single member owner (SMO) of an LLC is liable for some tax periods, and the LLC is liable for other tax periods assessed under the same Employer Identification Number, and
- an installment agreement is the proper case resolution for both parties.

The most common scenario where these procedures will be applicable is when an LLC reported employment tax liabilities before and after January 1, 2009, but did not pay those liabilities. However, per IRM 5.1.21.3.7.1 there may be situations prior to January 1, 2009, where the identity of the liable taxpayer changed due to changes in ownership or election.

Key steps in the process are:

- Create one IA with one combined payment amount
- Securing separate Collection Information Statements (CIS) from each liable party
- Completion of the newly created Template, Attachment to SMO/LLC Installment Agreement.
- Completion of the Template, RO MMIA or IBTF-IA Closing Document

The templates required in this process are part of an ICS enhancement scheduled for July 2009. The entire installment agreement process for disregarded LLC entities is a required topic for the FY2009 Revenue Officer Continuing Professional Education (CPE) scheduled for delivery this summer.

If you have any questions, please contact me or have a member of your staff contact Senior Program Analyst, Ann Marie Bushong.

Attachment

cc: Director, Collection  
 Chief, Appeals  
 Director, Campus Compliance Services  
 Director, Campus, Filing and Payment Compliance  
 Director, Advisory, Insolvency and Quality

**Attachment to IG SBSE 05-0509-020**  
**Processing of In-Business Trust Installment Agreements for**  
**Disregarded Limited Liability Company Entities**

**Investigative Steps:**

Request input of the appropriate TC 971 AC 364/365/366 to each tax module once you have identified the liable taxpayer:

Secure a separate Collection Information Statement (CIS) from each liable party:

- From the SMO (pre January 1, 2009 liabilities)
  - Form 433-A, if the SMO is an individual, or
  - Form 433-B, if the SMO is another entity
- From the LLC (post January 1, 2009 liabilities)
  - Form 433-B

The IA payment amount is based on the combined payment ability demonstrated by the separate collection information statements from the SMO and LLC.

Address any applicable CSED (IRM 5.14.2.2) and TFRP issues (IRM 5.14.7.3.1.1).

Inform the taxpayer an *Attachment to SMO/LLC Installment Agreement* will be included with the IA acceptance letter (L2850).

**ICS Documentation and IA Input:**

These combined installment agreements will include both the name of the LLC and the name of the SMO. This is an exception to the “general rule” regarding LLC entities where only the name of the LLC *or* the name of the owner will appear on administrative collection actions. When requesting a combined IA on ICS, select the name line that includes **BOTH** the name of the LLC and the name of the SMO. If necessary, create a new name line.

Within the Installment Agreement Templates menu, complete the following *Attachment to SMO /LLC Installment Agreement*:

**Attachment to SMO/LLC Installment Agreement**  
**Employer Identification Number xx-xxxxxxx (LLC EIN)**

This agreement is between the Internal Revenue Service and (SMO name and LLC name).

The monthly payment amount is \$\_\_\_\_\_. The monthly payment is based on (SMO name)’s collection information statement amount of \$\_\_\_\_ plus

(LLC name)'s collection information statement amount of \$ \_\_\_\_\_.  
Payments will be accepted from (SMO name) or (LLC name) (collectively, the "taxpayers") and will be applied in the best interest of the government regardless of liable party.

In the event of default, enforcement action will be taken against (the SMO name) for tax period(s) ended XX/XX/XXXX (list) and against (the LLC name) for tax period(s) ended XX/XX/XXXX (list).

Once completed, print three copies and place in case file. If there is no Power of Attorney (POA), you only need to print two copies.

To ensure proper processing at CCP, document your closing narrative with the following information:

- Include the statement: **"This is a SMO/LLC IBTF-IA."**
- Copy and paste the *Attachment to SMO/LLC Installment Agreement*.
- Define the combined IA payment amount by the individual payment ability of the SMO and LLC. For example:
  - IA payment amount is \$1000 based on the SMO's payment ability of \$400 and the LLC's payment ability of \$600.

ICS installment agreement processing does not have a choice for a SMO/LLC IBTF-IA combination. In order to accommodate this type of IA, follow this process:

- Using Option A, select the following option from the Installment Agreement menu:
  - "CCP(PSC)-IBTF-IA (NF ITEM in CCP)"
- Input the required data into the IBTF-IA fields.
- In the *Additional Terms/Conditions* field on the F433D, input the following statement:
  - SMO/LLC IA: See attachment.

#### **Approval and Processing:**

##### **Revenue Officer and Group Manager:**

Complete the *RO MMIA or IBTF-IA Closing Document* located in the Installment Agreement Templates menu and attach it to the closed IBTF-IA closed file.

Forward the case file, including three copies of the *Attachment to SMO/LLC Installment Agreement* to the Group Manager for review, approval and processing.

Once the Group Manager approves the IA, the Form 433D, Letter 2850 and Form 3210 is generated. Distribute the printed material as follows:

- Mail Letter 2850 with the *Attachment to SMO/LLC Installment Agreement*, to the taxpayer and representative, if applicable.
- Include the Form 433-D with a copy of the *Attachment to SMO/LLC Installment Agreement* in the case file. Write “**SMO/LLC IBTF-IA**” in **red** ink across the top of the Form 433-D.
- Attach the ICS generated Form 3210 to the case file. Write “**SMO/LLC IBTF-IA**” in **red** ink in the body of the Form 3210. Forward to CCP for monitoring.

**Centralized Case Processing (CCP):**

CCP will take the following actions for input and monitoring of the IBTF-IA:

- Review the case per IRM 5.4.11
- Input the entity into Status 60 on IDRS upon receipt of the Other Investigation (OI) systemically created once the GM approves the IA.
- Update the subcode
  - 932 = SMO/LLC IBTF-IA, or
  - 933 – SMO/LLC MMIA
- Input a history on ENMOD stating
  - this is a SMO/LLOC IBTF-IA, and
  - total IA payment amount, and
  - individual payment ability of SMO and LLC.
- Monitor payment and filing compliance.
- Issue separate default notices to the SMO and LLC.